

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Southwestern Bell)	
Telephone Company, d/b/a SBC)	
Missouri's Proposed Revised Tariff)	
Sheet Intended to Increase by Eight)	Case No. IT-2004-0015
Percent the Rates for Line Status)	Tariff No. J1-2003-2141
Verification and Busy Line Interrupt)	
As Authorized by Section 392.245,)	
RSMo., the Price Cap Statute)	

**SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A SBC MISSOURI'S
RESPONSE TO NOTICE OF REMAND AND MOTION TO CLOSE CASE**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri"), and for its Response to Notice of Remand and Motion to Close Case, states as follows:

EXECUTIVE SUMMARY

In this case, SBC Missouri filed tariffs to increase prices by 8% or less for two non-basic services, Line Status Verification and Busy Line Interrupt, pursuant to the provisions of the price cap statute, Section 392.245.11. The Missouri Public Service Commission ("Commission") rejected the tariffs on the basis that the increases, while not in excess of the amount permitted by the price cap statute, were nevertheless not just and reasonable. On review, the Missouri Court of Appeals ("Court of Appeals") reversed, finding that the Commission did not have authority to reject tariffs which complied with the price cap statute. The Court of Appeals has now issued its mandate and has specifically directed the Commission to approve the previously filed tariffs. The Commission is required to comply with the mandate, and may not refuse to approve the tariffs on the basis that changes to the price cap statute would now limit rate increases to 5%. This result is legally required, and is also appropriate because, as the Court of Appeals determined, these tariffs should have gone into effect when originally filed.

RESPONSE TO STAFF

1. SBC Missouri filed a tariff on June 10, 2003, proposing to increase the price for Line Status Verification by 8% and Busy Line Interrupt by 7.8% pursuant to the provisions of Section 392.245.11. On November 6, 2003, the Commission rejected the tariff, finding the proposed increases to be unjust and unreasonable. SBC Missouri appealed to the Circuit Court of Cole County, which affirmed the Commission's order denying the proposed revisions. SBC Missouri then appealed to the Court of Appeals. On July 26, 2005, the Court of Appeals reversed the Commission, finding: (1) Section 392.245.11 grants an incumbent local exchange company ("ILEC"), subject to price cap regulation, the right to annually increase its rates for non-basic service by up to eight percent from the previous year's rate; and (2) the Commission, in denying SBC Missouri's proposed tariff revisions, unlawfully disregarded the requirements of Section 392.245.11 ("Opinion").¹ The Court of Appeals remanded the case to the Commission with directions to approve SBC Missouri's proposed tariff revisions, the Commission having already determined that they are in compliance with Section 392.245.11.² On November 3, 2005, the Court of Appeals issued its mandate, which specifically directed the Commission to approve SBC Missouri's proposed tariff revisions in accordance with the Court of Appeal's July 25, 2005, Opinion.³

2. On November 7, 2005, the Staff of the Missouri Public Service Commission ("Staff") filed its Notice of Remand and Motion to Close Case in the above-captioned matter ("Notice"). In its Notice, Staff notes that Senate Bill No. 237 recently amended Section

¹ State of Missouri ex rel. Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, et al. v. The Missouri Public Service Commission and the Office of Public Counsel, WD 64502, July 26, 2005, p. 8, attached hereto and marked as Exhibit A.

² Id. at 9.

³ State of Missouri ex rel. Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, et al. v. The Missouri Public Service Commission and the Office of Public Counsel, WD 64502, November 3, 2005, p. 1, attached hereto and marked as Exhibit B.

392.245.11, RSMo., to reduce the maximum allowable annual increase for a price cap regulated company's nonbasic telecommunications services from eight percent to five percent. Thereafter, Staff suggests that it is now up to SBC Missouri to submit a new tariff filing which complies with Section 392.245.11, as amended, if SBC still proposes to increase the rates for these two services ("Staff's suggestion"). Finally, Staff states that such a tariff submission by SBC Missouri need not be filed in this case and Staff requests the Commission to close this case.

3. The Commission should reject Staff's suggestion because it is not in compliance with the Court of Appeal's Opinion and Mandate. Moreover, the Commission should not close this case until it approves SBC Missouri's proposed tariffs, which were unlawfully rejected by the Commission.

4. The initiatives open to a trial court (here the Missouri Public Service Commission) on remand are as rendered in the mandate and opinion of the appellate court.⁴ Where a remand is with directions, a trial court is bound to render judgment in conformity with the mandate.⁵ The trial court is without power to modify, alter, amend or otherwise depart from the appellate judgment.⁶ Any proceeding contrary to the directions of the mandate is null and void.⁷

5. In its Opinion, the Court of Appeals states: "[t]he Commission's order denying the appellant's proposed tariff revisions is reversed and the cause is remanded to the Commission

⁴ State of Missouri ex rel. Frances P. Sturm, et al. v. Emery W. Allison, 384 S.W.2d 544, 548 (Mo. 1964); Langermann v. Langermann, 144 S.W.3d 888 (Mo. App. 2004); Riordan v. Clark, 67 S.2.3d 610, 613 (Mo. App. 2001); City of Excelsior Springs v. Elms Redevelopment Corporation, 18 S.W.3d 61, 64 (Mo. App. 2000); Rickard v. Rickard, 818 S.W.2d 711, 713 (Mo. App. 1991).

⁵ State of Missouri ex rel. Frances P. Sturm, et al. v. Emery W. Allison, 384 S.W.2d 544, 548 (Mo. 1964); Langermann v. Langermann, 144 S.W.3d 888, 891 (Mo. App. 2004); Riordan v. Clark, 67 S.2.3d 610, 613 (Mo. App. 2001); City of Excelsior Springs v. Elms Redevelopment Corporation, 18 S.W.3d 61, 64 (Mo. App. 2000); Rickard v. Rickard, 818 S.W.2d 711, 713 (Mo. App. 1991).

⁶ Id.

⁷ State of Missouri ex rel. Frances P. Sturm, et al. v. Emery W. Allison, 384 S.W.2d 544, 548 (Mo. 1964); Riordan v. Clark, 67 S.2.3d 610, 613 (Mo. App. 2001); Rickard v. Rickard, 818 S.W.2d 711, 713 (Mo. App. 1991).

with directions to approve SBC's proposed tariff revisions, the Commission having already determined that they are in compliance with §392.245.11.”⁸ Subsequently, on November 3, 2005, the Court of Appeals entered its mandate stating: “[n]ow on this day the judgment is reversed, and the cause is remanded to the Commission with directions to approve SBC's proposed tariff revisions all in accordance with the Opinion of this Court.”⁹

6. Since the remand from the Court of Appeals was with directions (see Exhibit A, “the cause is remanded to the Commission with directions to approve SBC's proposed tariff revisions” and see Exhibit B, “the cause is remanded to the Commission with directions to approve SBC's proposed tariff revisions all in accordance with the Opinion of this Court”), the Commission is bound to render judgment in conformity with the mandate. The Commission must, therefore, approve SBC Missouri's proposed tariff revisions. Staff's suggestion that “it is now up to SBC Missouri to submit a new tariff filing which complies with Section 392.245.11, as amended, if SBC still proposed to increase the rates for these two services” would require the Commission to vacate the mandate of the Court of Appeals and would be unlawful.

7. Not only is the Commission legally required to approve SBC Missouri's proposed tariffs, that is also the appropriate result. The Court of Appeals has clearly determined that the Commission lacked authority to reject the tariffs. If the Commission had not rejected the tariffs, they would have been effective July 10, 2003. Allowing those tariffs to go into effect now is required by the mandate and is the appropriate resolution.

⁸ State of Missouri ex rel. Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, et al. v. The Missouri Public Service Commission and the Office of Public Counsel, WD 64502, July 26, 2005, p. 9, attached hereto and marked as Exhibit A.

⁹ State of Missouri ex rel. Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, et al. v. The Missouri Public Service Commission and the Office of Public Counsel, WD 64502, November 3, 2005, p. 1, attached hereto and marked as Exhibit B.

8. It follows that the Commission should not close this case until it approves SBC Missouri's revised tariffs.

WHEREFORE, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, prays that the Commission consider its Response to Notice of Remand and Motion to close case, approve SBC Missouri's Line Status Verification and Busy Line Interrupt Service tariffs, and only close this case after it has approved SBC Missouri's tariffs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via e-mail on November 14, 2005.


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